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**IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH**

SanMedica International, LLC, Quality IP
Holdings, LLC

Plaintiffs,

v.

Metabolic Research Center, Metabolic
Research Center of Brevard, County, Inc.,
Metabolic Research Center of Fort Walton
Beach, Inc., Metabolic Research Center of
Jacksonville, Inc., Metabolic Research
Center of Merritt Island, Inc., and John Does
1-10,

Defendants

**PLAINTIFFS' EX PARTE MOTION
FOR LEAVE TO SERVE
DEFENDANTS BY ALTERNATE
MEANS THROUGH PUBLICATION**

Case No. 2:20-cv-00316-JNP-DAO

Plaintiff SanMedica International, LLC ("SanMedica") and Plaintiff Quality IP Holdings, LLC ("Quality IP Holdings") (collectively "Plaintiffs") move this Court for leave to serve Defendants, Metabolic Research Center, Metabolic Research Center of Brevard, County, Inc., Metabolic Research Center of Fort Walton Beach, Inc., Metabolic Research Center of Jacksonville, Inc., Metabolic Research Center of Merritt Island, Inc. (Collectively "Metabolic" or

“Defendants”) through alternate means, specifically by publication of the summons information in the Jacksonville Daily Record, which is a paper of general circulation in the location where the Defendants were last known to reside.

Summary of Diligent Efforts to Serve Defendants

After diligent inquiry and search efforts, Plaintiffs have been unable to serve process on the above-named Defendants. Plaintiffs have made 5 attempts to serve Defendants at various addresses over a more than 5-month period. Each of these attempts was unsuccessful. See the Declaration of Steven W. Garff filed concurrently herewith.

Prior to filing the Complaint, Plaintiff hired a Private Investigator, J&J Investigations, LLC, to try to locate Defendants. J&J Investigations determined that the address for all of Defendants is 3229 HWY 17, Green Cove Spring, FL 32043. Plaintiff hired a process server, ABC Legal, to serve Defendants at that Address.

On May 27, 2020 ABC Legal attempted to serve Defendants at that Green Cove Spring Address. The person who met the process server refused to give her name and claimed that it was the wrong address and that this was not the location of Metabolic Research.

On June 1, 2010 ABC Legal returned to the Green Cove Spring Address to again attempt to serve Defendants. This time the process server was met by a different individual who also refused to give her name. The process server noted that “Non-residency indicated by property manager states not resident. This is property security services. It is not metabolic research center.”

On August 25, 2020, ABC Legal attempted to serve Defendants at a potential alternate address that Plaintiff’s investigation located for Defendants, 6191 W. Shore Rd, Flemind Island, FL 32003. There was no answer at the door.

On September 7, 2020, ABC Legal returned to the Flemind Island address in an effort to serve Defendants. Again, there was no answer at the door and the process server could not locate any numbers to call.

On September 18, 2020, ABC Legal returned to the Flemind Island address in an effort to serve Defendants. An individual who would not give his name said that the correct address is for Metabolic Research center is 3229 Highway 17 Green Cove Springs (where Plaintiff already made two unsuccessful service attempts as was told by people who refused to give their names that it was the wrong address) and said this building is vacant.

Based on Plaintiff's investigations, Defendants do not appear to have active registered agents and Plaintiffs have been unable to locate any such agents on the Florida Secretary of State Website.

ARGUMENT

Fed. R. Civ. P. 4(e)(1) addresses service by publication in federal actions. Fed. R. Civ. P. 4 (h) *Serving a Corporation, Partnership, or Association* governs the service of corporate entities, such as Defendants, and provides that such defendants may be served in "the manner prescribed by Rule 4(e)(1) for serving an individual." Rule 4(e)(1) states an individual may be served by "following state law for serving summons in an action brought in courts of general jurisdictions in the state where the district court is located, or where service is made." Utah Rule of civil Procedure Rule 4 provides:

(d)(5) Other service.

(d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the

efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(d)(5)(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must also specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(d)(5)(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

As discussed above and in the Declaration filed concurrently herewith, either the whereabouts of the Defendants are unknown and cannot be ascertained through reasonable diligence or else Defendants are avoiding service.

Plaintiffs will publish a description of the Summons in the Jacksonville Daily Record, which is a paper of general circulation in the location where the Defendants were last known to reside. This Summons description will be published at least once a week for six weeks. Plaintiffs will post the following notice in the paper:

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

Case Name: SanMedica International et al v. Metabolic Research Center et al

Case Number: 2:20-cv-00316-JNP-DAO (Federal Court, District of Utah)

NOTICE OF ACTION:

TO: Metabolic Research Center, last known mailing address: 3229 HWY 17, Green Cove Spring, FL 32043; Metabolic Research Center of Brevard, County, Inc., last known mailing address: 3229 HWY 17, Green Cove Spring, FL 32043; Metabolic Research Center of Fort Walton Beach, Inc., last known mailing address: 3229 HWY 17, Green Cove Spring, FL 32043; Metabolic Research Center of Jacksonville, Inc., last known mailing address: 3229 HWY 17, Green Cove Spring, FL 32043; Metabolic Research Center of Merritt Island, Inc., last known mailing address: 3229 HWY 17, Green Cove Spring, FL 32043.

YOU ARE NOTIFIED THAT: SanMedica International, LLC and Quality IP Holdings, LLC bring claims against each of you for False Advertising in Violation of the Lanham Act 15 U.S.C. § 1125(a)(1)(B)); Unfair Competition in Violation of Lanham Act 15 U.S.C.

§ 1125(a)(1); Declaratory Judgment; Unfair Competition; Business Disparagement; Unjust Enrichment; and Patent Infringement of United States Patent Nos. 10,292,964, 9,238,023, 9,066,953, 9,339,490, 9,198,889, 8,815,311, 10,300,101, 8,722,114, 8,734,864, 8,715,752, 8,747,921, 8,808,763, 8,4747,922, 8,808,764, 8,765,195, 10,279,004, and 10,292,957.

YOU ARE FURTHER NOTIFIED THAT: You are to serve a written copy of your defense, if any, to: Steven Garff, at PRICE PARKINSON & KERR, PLLC, Attorney for Plaintiffs, whose address is 5742 West Harold Gatty Drive, Suite 101 Salt Lake City, UT 84116 on or before [date to be inserted]. If you fail to do so, a default may be entered against you for the relief demanded in the Complaint. Copies of all court documents in this case, including orders, are available at the Clerk of the District Court's office. You may review these documents upon request.

This notice is reasonably calculated, under all the circumstances, to apprise the named parties of the action.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant this Motion and allow Plaintiff to serve Defendants by alternate means through publication as described above and in the Proposed Order filed concurrently herewith.

Dated: October 26, 2020

Respectfully submitted,

PRICE PARKINSON & KERR, PLLC

/s/ Jason M. Kerr

Jason M. Kerr

Ronald F. Price

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**ATTORNEYS FOR PLAINTIFF
SANMEDICA INTERNATIONAL, LLC**